IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2002

CORAM

THE HONOURABLE MR. JUSTICE A.S. VENKATACHALAMOORTHY
and
THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Appeal Suit No.1113 of 1989 and Appeal Suit No. 1114 of 1989
and
C.M.P.No.14012 of 1989

Lakshmana Gounder ..... Appellant in both the appeals.

-Vs-

1. The Special Deputy Collector
(LA), Salem Steel Plant,
Salem.

2. Palani

3. Kittaiyammal

4. Subramania Mudali ..... Respondents in A.S.No.1113/89

1. The Special Deputy Collector
(LA), Salem Steel Plant,
Salem.

2. Palani

3. Kittaiyammal

4. Palaniammal

5. Seeranga Gounder

6. K.K.Subramania Gounder Respondents in A.S.
No.1114/89

Appeal against the award made in L.A.O.P. No.31 and 2 of 1978 on the file of the Sub Court, Salem dated 21.10.1982.

For appellant : Mr.Xavier Arulraj for
M/s.Muthumani Doraisamy

For 1st Respondent : Mr.R.Ashokan, AGP

For RR 2 and 3 : Mr.S.Kalyanaraman

For other respondents: No appearance.

:JUDGMENT

(Judgment of the Court delivered by A. Kulasekaran, J)

For providing security measures and other purposes to Salem Steel Plant, the Tamil Nadu Government has acquired large extent of lands which include the lands which are subject matter in A.S.Nos.1113 and 111 4 of 1989 preferred against L.A.O.P.No.31 and 2 of 1978 respectively. The land which is the subject matter of L.A.O.P.No.2 of 1978 is an extent of 7.01 acres comprised in Survey Nos.39/2C1 to 39/2C4 and 39 /2E. The land which is the subject matter of L.A.O.P.No.31 of 1978 is an extent of 73 cents comprised in Survey Nos.39/2A, 39/2B and 39/2 D. Notification under sec.4(1) of the Land Acquisition Act was issued by the Government on 12.2.1964. Declaration under sec.6 was made on 1 8.1.1969. The Land Acquisition Officer, after complying with the provisions of the Land Acquisition Act, passed award No.7 of 1977 dated 9.11.1977 and award No.12 of 1977 dated 28.12.1977 respectively. . As there was dispute with regard to ownership of the land, the entire compensation amount was deposited in the court of Principal Sub Judge, Salem and the matter was referred under sec.30 and 31(2) of the Land Acquisition Act.

2. The appellant herein is the third claimant in both the L.A.O.P. s. Respondents 2 and 3 herein are claimants 1 and 2 in both the L.A. O.P.s. The Reference Court disposed of both the L.A.O.P.s by a common order. Hence, we also propose to dispose of both the appeals by a common judgment.

3. The case of the appellant is as follows:-

About 52 years back, a oral partition had taken place between his paternal grandfather Ramanna Gounder and his sons. In the said partition, Survey Nos.39/2C1 measuring 3.53 acres, 39/2C2 measuring 2.38 acres, 39/2C3 measuring 0.95 cents, 39/2C4 measuring 0.15 acres 39/2E measuring 1.49 acres and other lands were allotted to his father Paramasiva Gounder who was in possession and enjoyment after obtaining patta in No.68. Subsequently, in a oral partition between the sons of Paramasiva Gounder and the appellant, the land in Survey No.33/2C1 measuring 3.53 acres, 39/2C2 measuring 2.38 acres, 39/2C3 measuring 0.95 cents, 39/2C4 0.15 cents and 39/2C3 1.49 acres and some other lands were allotted to him. The appellant was in possession of the said lands eversince the date of partition till the acquisition proceedings were initiated. His paternal uncle Palani Gounder, the vendor of respondents 2 and 3 who got some other lands in the said partition has initiated proceeding under sec.145 Cr.P.C. against the appellant and others in respect of acquired lands. In the said proceedings, a direction was given by the Revenue Divisional Officer to seek his remedy if any before the civil court. Thereafter, the said Palani Gounder has executed a nominal deed in favour of respondents 2 and 3 without filing any suit. The respondents 2 and 3 filed a suit in O.S.No.92 1 of 1966 before the District Munsif Court, Sankari against

the appellant which was later withdrawn. In the meanwhile an enquiry was conducted under the Inam Abolition Act and the Settlement Officer wrongly ordered for patta in favour of respondents 2 and 3 herein in respect of the lands in Survey Nos.39/2C1, 39/2C2, 39/2C3, 39/2C4 and other lands. The appellant herein has preferred an appeal against the order of the Settlement Officer in which his name was also included in the said patta. The land acquired under Survey Nos.39/2C1 to 39/2C4 belonged to the appellant herein in which respondents 2 and 3 have no right at all. The other land acquired was an extent of 73 cents comprised in Survey No.39/2A measuring 0.05 cents, 39/2B measuring 0.28 cents and 39/2D 0.40 cents. The appellant herein has claimed the entire compensation of Rs.3605.95 awarded.

4. Respondents 2 and 3 herein contested the said L.A.O.P. Their case is as follows:-

The land acquired belongs to them which was purchased for valid consideration from the previous owner Palani Gounder who had been in possession and enjoyment for several years. In the enquiry conducted, the Settlement Tahsildar in S.R.No.232/67 has passed order that respondents 2 and 3 were in exclusive possession and enjoyment of the acquired land. The suit in O.S.No.921 of 1966 was withdrawn on the ground that the appellant was not in exclusive possession and enjoyment and prayed for dismissal of the appeals.

5. Before the Reference Court, the appellant and respondents 2 and 3 let in oral and documentary evidence. The court below has passed the judgment and decree holding that the appellant is entitled to compensation for the lands to an extent of 1.76 acres and respondents 2 and 3 each are entitled to compensation for the lands to an extent of 3 .73 acres. Aggrieved by the said judgment, the appellant herein has preferred the above appeals claiming 50% of the compensation for the entire extent of land of an extent of 9.23 acres.

6. Point for consideration in these appeals is whether the appellant is entitled to 50% of the compensation in respect of the entire land to an extent of 9.23 acres.

7. The lands in question in both the appeals originally belonged to Ramanna Gounder the paternal grandfather of the appellant. The lands were formerly unsurveyed. They were taken over by the Government under Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963) hereinafter referred to as "Act 26/63". Subsequently survey has been conducted. The patta has been granted in the name of respondents 2 and 3 on the ground that they had purchased the property under Ex.B1 dated 4.7.1966 from one Palani Gounder and were in possession.

8. The appellant has preferred appeal before the Inam Abolition Tribunal in M.I.A.84/68 under sec.12(2) of the Act26/63 in which he was included as one of the joint pattadar which is seen from Ex.A4 dated 5 .4.1972. The subject matter of the said appeal was the lands of an extent of 8.65 acres comprised in Survey No.39/2. The appellant has canvassed before the said Tribunal that Palani Gounder never had any right or title in the said property as such he could not convey any title under Ex.B1 to respondents 2 and 3, that the same had been created after the notification was issued under Act 26/63. The Tribunal has pointed out that in Ex.B1, though it was mentioned that the property belonged to Palani Gounder and his sons as their ancestral property, nothing specifically stated about the partition. However, the Tribunal has rightly found that the sale deed was executed in the year 196 6 after the property vested with the Government under notification dated

15.4.1965 as such no importance could be given to Ex.B1. The Tribunal found that if the mortgage was true and if it was discharged, there would be an endorsement, but, no such endorsement found. The Tribunal also observed that the appellant herein has rightly pointed out that the said mortgage was after the dismissal of sec.145 Cr.P.C. proceedings as such, it might have been created to make a claim later on. The Tribunal further came to the conclusion that though in the dismissal order in sec.145 Cr.P.C. proceedings Palani Gounder was directed to approach the civil court, he has not chosen to file ay suit as such the contention that Palani Gounder would have been in possession of the entire extent of land at that time could not be accepted. However, respondents 2 and 3 have filed O.S.No.921 of 1966 for declaration of title and recovery of possession which was also withdrawn with the permission of the court to file a fresh suit on the same subject matter. They had also filed I.A.No.1706 of 1966 for grant of temporary injunction and the same was also dismissed as pointed out by the Tribunal. The Tribunal, based on the advocate commissioner's oral evidence, report, sketch and kist receipts found that the appellant was also in possession and enjoyment of a portion of the lands which are subject matter of that appeal. Though the Tribunal has observed that it was not necessary to decide in the said appeal as to what extent each one of them was entitled to in that land, held that the appellant herein has also been in possession of the property. Consequently, patta issued by the Settlement Tahsildar was modified and dissected and directed to be issued jointly in the name of the appellant and respondents 2 and 3. No appeal has been preferred against the order passed by the Tribunal either by the appellant or by respondents 2 and 3.

9. According to respondents 2 and 3, they were also given joint patta along with the appellant as per the order passed in Ex.A4 as such the apportionment ordered by the Court below is sustainable. Exs.A1, A2 and A11 show that the suit in O.S.No.921 of 1966 filed by respondents 2 and 3 for declaration an injunction against the appellant and others was dismissed as withdrawn. Ex.A19 is the joint memo dated 31 .8.1977 filed by the appellant and respondents 2 and 3 herein in L.A.O.P.No.33 of 1976 wherein it is mentioned that without prejudice to the right of the appellant herein to file a regular suit to establish his exclusive right in the acquired land, he has withdrawn 50% of the compensation and similarly respondents 2 and 3 have also withdrawn the remaining 50% of the compensation. Indeed in the said joint memo, all the said three persons have signed. Ex.A20 is order passed in L.A.O.P.No.33 of 1976 based on the joint memo. It is to be noted here that the appellant has not initiated any proceedings to establish that he is entitled to the entire compensation amount in respect of L.A.O.P.No.33 of 1976.

10. The Act 26/63 provides for acquisition of rights of the land holders in inam estates in the State of Tamil Nadu and the introduction of ryotwari settlement in such estates. Under sec.3(b) of Act 26/63, on the date of notification of taking over of the estate and the interests of the land holders therein would completely extinguish except the sites on which buildings have been erected either by the land holder or by any other person. Such rights have been separately dealt in sec.15 of the said Act. Under sec.9, in the case of an existing inam estate, the land owner shall with effect on and from the notified date, be entitled to a ryotwari patta and such person should be owning an estate or a part thereof or a person entitled to

collect rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or by any order of a competent court or by any provision of law. Under sec.10 of the said Act, in the case of existing inam estate, every ryot shall with effect on and from the notified date be entitled to a ryotwari patta in respect of his lands. Under sec.11, ryotwari patta can be issued on the basis of personal cultivation in certain cases. Sec.12 contemplates the determination of land in which a person is entitled to ryotwari patta. In this case, the officer, on examination of the claim of the parties has issued patta in favour of respondents 2 and 3. Aggrieved by the said order, the appellant herein has preferred an appeal under sec.12(2) before the Inam Abolition Tribunal. The Tribunal allowed the appeal directing for issuance of joint patta in the name of the appellant and respondents 2 and 3 which is evident from Ex.A14. Later, the Tahsildar issued regular patta Exs.B2 and B3 in favour of respondents 2 and 3 each to an extent of 3.73.5 acres. The balance extent is 1.76 acres as both sides have admitted the total extent as 9.23 acres. The appellant has not challenged the said Exs.B2 and B3 till date.

11. It is canvassed before us that the court below erred in apportioning the compensation on the basis of Exs.B2 and B3; that respondents 2 and 3 together are entitled only to half of the total compensation and the appellant is entitled to the remaining half; and that the extent mentioned in Exs.B2 and B3 is in Hectares and not in Acres. The said argument is untenable as the appellant herein has not placed any evidence either before the court below or before us to substantiate the same.

12. A patta is a record of possession represents a distinct fractional part of lands. The said presumption has its roots in the system of land tenure and in the custom of the area in which the lands are situate. Each pattadar manages his lands and pays fixed share of the Government Revenue. Entries in revenue records are not conclusive, but their importance in a case for possession cannot be denied, until contrary is shown. Though one cannot challenge the entry in revenue records as incorrect but can always impugn it as having been made fraudulently or surreptitiously. Followed the decision in Vishwa Vijay Bharathi Vs. Fakhrul Hassan and others reported in ((1976) 3 SCC 642). In this case, the Apex Court has held the entries in the Revenue records generally to be accepted at their face value and Courts should not embark upon an appellate enquiry into their correctness. But, the presumption of correctness can apply to genuine, not forged or fraudulent entries. When, in a particular case, facts disclose no title in either party, possession alone will decide the right of the parties.

13. We have gone through the evidence of the appellant who was examined as CW1 before the court below wherein he has not disputed the validity or veracity of Exs.B2 and B3. Even in the cross examination of RW1, no suggestion was put confronting with Exs.B2 and B3. Admittedly, the appellant herein has not impugned Ex.B2 and Ex.B.3 till date. The appellant herein has not placed any document before the court below to prove the actual extent of land under his occupation whereas respondents 2 and 3 have produced Exs.B2 and B3 to prove the extent of land in their possession. Hence, the court below has rightly apportioned the compensation based on Exs.B2 and B3. Hence, we have no hesitation in confirming the judgment and decree of the court below.

14. In the result, the appeal is dismissed. No costs. Consequently, the connected C.M.P. is also dismissed.

Index: Yes
Internet: Yes
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To
1. The Sub Court,
Salem.